

reasonable and fair. Keyport, Keyport America and Liberty Life each believe, based on their review of existing federal income tax laws and regulations and advice of counsel, that the Substitution will not give rise to any taxable income for Owners.

Applicants' Conclusions

Applicants submit, for all of the reasons stated herein, that their requests meet the standards set out in Sections 17(b) and 26(b) of the 1940 Act and that an order should, therefore, be granted. Accordingly, Applicants request an order pursuant to Sections 17(b) and 26(b) of the 1940 Act approving the substitution of shares of MAF for shares of SMAF, the substitution of shares of MSIF for shares of USGS, and the substitution of shares of SIF for shares of MIF, respectively.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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[Rel. No. IC-21331/812-9662]

Van Kampen Merritt Equity Trust et al.; Notice of Application

August 31, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Kampen Merritt Equity Trust (the "VK Trust"), American Capital Utilities Income Fund, Inc. (the "AC Fund"), Van Kampen American Capital Investment Advisory Corp. (the "VK Adviser"), Van Kampen American Capital Asset Management, Inc. (the "AC Adviser"), and Van Kampen American Capital Distributors, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 17(b) granting an exemption from section 17(a).

SUMMARY OF APPLICATION: Applicants request an order to permit the VK Fund, a sub-trust of the VK Trust, to acquire all of the assets of the AC Fund. Because of certain affiliations, the two funds may not rely on rule 17a-8 under the Act.

FILING DATE: The application was filed on July 12, 1995. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be

issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 25, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, One Parkview Plaza, Oakbrook Terrace, Illinois 60181.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942-0654, or Alison E. Baur, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Van Kampen Merritt Utility Fund (the "VK Fund") is a sub-trust of the VK Trust, an open-end management investment company organized as a Massachusetts business trust. The AC Fund is an open-end management investment company organized as a Maryland corporation (the VK Fund and the AC Fund are collectively referred to as the "Funds"). The VK Adviser advises the VK Fund, and the AC Adviser advises the AC Fund. As of May 31, 1995, the AC Adviser owned 9.25% of the outstanding voting shares of the AC Fund.

2. On December 20, 1994, The Van Kampen Merritt Companies, Inc. acquired from The Travelers Inc. all of the outstanding capital stock of American Capital Management & Research, Inc., which at that time was the parent company of the AC Adviser. Immediately following this acquisition, American Capital Management & Research, Inc. was merged into The Van Kampen Merritt Companies, Inc. and the combined entity was renamed Van Kampen American Capital, Inc. The VK Adviser, the AC Adviser, and the Distributor are wholly-owned subsidiaries of Van Kampen American Capital, Inc., and are organized as Delaware corporations.

3. Van Kampen American Capital, Inc. is a wholly-owned subsidiary of VK/AC Holding, Inc. VK/AC Holding, Inc., in turn, is controlled by The Clayton & Dubilier Private Equity Fund IV Limited Partnership ("C&D L.P."), which owned, as of August 29, 1995, approximately 86 percent of the common stock of VK/AC Holding, Inc. C&D L.P. is managed by Clayton, Dubilier & Rice, Inc., a New York-based private investment firm. The general partner of C&D L.P. is Clayton & Dubilier Associates IV Limited Partnership.

4. The investment objectives of the Funds are essentially the same. The investment objective of the VK Fund is to provide its shareholders with capital appreciation and current income. The VK Fund seeks to achieve its objective by investing in a diversified portfolio of common stocks and income securities issued by companies engaged in the utilities industry. Under normal market conditions, at least 80% of the VK fund's assets are invested in securities issued by companies engaged in the utilities industry. As of May 31, 1995, the net assets of the VK Fund were \$134,753,821.

5. The primary investment objective of the AC Fund is to provide its shareholders with current income. Capital appreciation is a secondary objective which is sought only when consistent with the primary objective. The AC Fund seeks to achieve its investment objective by investing in a diversified portfolio of common stocks and income securities issued by companies engaged in the utilities industry. Under normal market conditions, at least 65% of the AC Fund's assets are invested in securities issued by companies engaged in the utilities industry. As of May 31, 1995, the net assets of the AC Fund were \$26,996,393.

6. Each fund offers three classes of shares. Class A shares of the Funds generally are sold with a front-end sales charge. Purchases of Class A shares in excess of \$1,000,000 are not subject to a front-end sales charge but are subject to a contingent deferred sales charge ("CDSC") of 1.00% if redeemed within one year from the date of purchase. Class B shares of the Funds are sold without a front-end sales charge but are subject to a CDSC payable upon redemption. Class C shares of the Funds are sold without a front-end sales charge and are subject to a CDSC of 1.00% if redeemed within one year of purchase.

7. The VK Fund proposes to acquire all of the assets of the AC Fund, in exchange for shares of beneficial interest in the VK Fund and the assumption by the VK Fund of all of the liabilities of

the AC Fund. The number of shares of each class of the VK Fund to be issued to shareholders of the AC Fund will be determined on the basis of the Funds' relative net asset values for each class of shares, computed as of 5:00 p.m. Eastern time on the closing date. Class A, Class B, and Class C shareholders of the AC Fund will receive, respectively, Class A, Class B, and Class C shares of the VK Fund. After this distribution and the AC Fund's winding up of its affairs, the AC Fund will be terminated.

8. In anticipation of the proposed reorganization, on April 7, 1995, the board of trustees of the VK Trust (the "VK Board") unanimously approved a consolidation plan (the "Consolidation Plan") which provided for: (a) merging certain funds advised by the VK Adviser and the AC Adviser, including the Funds, in order to achieve certain economies of scale and efficiency; (b) permitting exchangeability of shares between funds advised by the VK Adviser and the AC Adviser; (c) selecting a common transfer agent; (d) consolidating the VK Board and the board of directors of the AC Fund (the "AC Board") into a combined board;¹ and (e) reorganizing most of the funds advised by the VK Adviser and the AC Adviser, including the Funds, as Delaware business trusts. On May 11, 1995, the AC Board unanimously approved the Consolidation Plan. Shareholder approval of the actions proposed in the Consolidation Plan was obtained, or will be obtained, where necessary.

9. In anticipation of the proposed reorganization, the VK Board and the AC Board, including the non-interested trustees/directors, unanimously approved an agreement and plan of reorganization (the "Reorganization Agreement"). Applicants intend that the Reorganization Agreement will be submitted to the shareholders of the AC Fund for approval at a meeting to be held on or about September 15, 1995. A registration statement on Form N-14 containing a combined proxy statement/prospectus was filed with the Commission on May 25, 1995. The AC Fund began mailing the proxy statement/prospectus to its shareholders on August 4, 1995. Assuming that the required shareholder vote is obtained at

the AC Fund's shareholder meeting, the closing of the proposed reorganization is expected to be shortly thereafter, but not before applicants' receipt of the requested order.

10. In considering the Reorganization Agreement, the VK Board and the AC Board, including the non-interested trustees/directors of each board, considered a number of factors in concluding that the Funds' participation in the reorganization is in the best interests of each fund and that the interests of existing shareholders of the Funds will not be diluted. The factors considered by the boards included: (a) the capabilities and the resources of the VK Adviser and other service providers to the VK Fund; (b) the advisory fees and expenses of the Funds, the expense ratios of the Funds, and the anticipated expense ratio of the combined fund; (c) comparative investment performance of the VK Fund and the AC Fund; (d) the terms and conditions of the reorganization; (e) the potential benefits of the reorganization to affiliates of the Funds; (f) the similarity of the Funds; (g) the costs of the reorganization to the Funds; and (h) the fact that the reorganization will be effected on a tax-free basis. The VK Fund, as the surviving fund after the reorganization and merger of the VK Fund and the AC Fund, will be responsible for the expenses incurred by the AC Fund and the VK Fund in connection with the reorganization, and the VK Adviser, the AC Adviser, and the Distributor will be responsible for their respective expenses incurred in connection with the reorganization.

11. The consummation of the reorganization is subject to a number of conditions set forth in the Reorganization Agreement, including: (a) The shareholders of the AC Fund shall have approved the Reorganization Agreement; and (b) the parties shall have received all necessary approvals, registrations, and exemptions (including the requested order) under federal and state securities laws with respect to the proposed reorganization. Any provision of the Reorganization Agreement may be waived, amended, modified, or supplemented by the mutual written agreement of the parties; provided, however, that the parties will not make any material changes to the Reorganization Agreement that affect the application without the prior approval of the SEC. Applicants also agree not to waive, amend, or modify any provision of the Reorganization Agreement that is required by state or Federal law to effect the reorganization.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in pertinent part, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company, any security or other property. Section 17(b) provides that the SEC may exempt a transaction from section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

2. Rule 17a-8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all the assets of registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors/trustees, and/or common officers provided that certain conditions are satisfied. The proposed reorganization may not be exempt from the prohibitions of section 17(a) by reason of rule 17a-8 because the AC Adviser owns more than 5% of the outstanding voting securities of the AC Fund.

3. Applicants believe that the terms of the proposed reorganization satisfy the standards of section 17(b). The AC Board and the VK Board, respectively, including their disinterested trustees and directors, have reviewed the terms of the proposed reorganization, including the consideration to be paid or received, and have found that participation in the proposed reorganization as contemplated by the Reorganization Agreement is in the best interests of the VK Fund and the AC Fund, and that the interests of existing shareholders of the Funds will not be diluted as a result of the reorganization. In addition, the AC Board and the VK Board found that the proposed reorganization is consistent with the Funds' policies and the general purposes of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

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¹ The AC Fund will comply with section 15(f) of the Act with respect to the composition of the AC Board. Section 15(f) provides, in relevant part, that an investment adviser of a registered investment company may receive a benefit in connection with a sale of an interest in such investment company which results in an assignment of the investment company's advisory contract if, for a three-year period following the sale, 75% of the directors of the investment company are not interested persons of the adviser or its predecessor.